

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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BRUCE DANIELSON, :

Plaintiff, :

v. :

MIKE HUETHER, :

Defendant. :

**ANSWER**

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Defendant Mike Huether answers Plaintiff's Complaint as follows:

1. Defendant denies every allegation in Plaintiff's Complaint not specifically admitted in this answer.

2. Defendant's answer is based on the Court's Opinion and Order filed December 19, 2018 (Doc. 22). Defendant has responded only to allegations relevant to the claims that survived the Court's dismissal.

3. Defendant admits the allegation in paragraph 2 that he was the Mayor of Sioux Falls from 2010 to 2018. Defendant denies the other allegations in paragraph 2 as irrelevant based on the Court's dismissal order.

4. Paragraphs 6 and 10 state legal conclusions to which no response is required.

5. Defendant admits the allegation in paragraph 11 that this Court has federal-question jurisdiction over Plaintiff's surviving federal claims, and supplemental jurisdiction over his surviving state-law claims, but only as long as Plaintiff's federal claims survive.

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6. Defendant admits the allegations in paragraph 20.

7. Defendant admits the allegation in paragraph 23 that he was the elected Mayor of Sioux Falls from 2010 to 2018. Defendant denies the other allegations in paragraph 23.

8. Defendant is without sufficient information to admit or deny the allegations in paragraphs 30-32 and 36.

9. Defendant admits the allegation in paragraph 38 that the Division of Criminal Investigation investigated Plaintiff's complaint that he was assaulted at an informational meeting on April 14, 2015.

10. Defendant admits the allegation in paragraph 49 that counsel for Plaintiff served a notice under SDCL Ch. 3-21 dated September 24, 2015, for injury occurring on April 14, 2015, as a result of unspecified errors, acts, and omissions.

11. Defendant admits the allegation in paragraph 50.

12. Defendant is without sufficient information to admit or deny the allegation in paragraph 52.

13. Defendant is without sufficient information to admit or deny the allegations in paragraphs 88-89.

14. Defendant admits the allegation in paragraph 90 that he filed a complaint with the Sioux Falls Board of Ethics on March 26, 2014, that the Ethics Board held a hearing on March 28, 2014, and the Complaint was dismissed on the grounds it was frivolous and lacked any basis in fact or law by the Board on March 28, 2014 and the report and findings were filed with the city council via email and hand delivery on April 22, 2014. Defendant denies the other allegations in paragraphs 90-91.

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15. Defendant is without sufficient information to admit or deny the allegations in paragraphs 92-93.

16. Defendant is without sufficient information to admit or deny the allegations in paragraphs 115 and 117.

17. Paragraphs 145-147 state legal conclusions to which no response is required.

18. Defendant specifically denies that Plaintiff is entitled to any relief, including damages and injunctive relief.

19. Defendant affirmatively alleges that Plaintiff's state-law claim for assault is barred by the statute of limitation found at SDCL § 15-2-15(1).

20. Defendant affirmatively alleges that Plaintiff's First Amendment claims are barred to the extent that they depend on events occurring outside the statute of limitation found at SDCL § 15-2-15.2.

21. Defendant affirmatively alleges that the criminal statutes related to assault and stalking, SDCL §§ 22-18-1 and 22-19A-1, do not create a private right of action, and that South Dakota law does not recognize a civil claim for stalking. Plaintiff's civil remedy for stalking is limited to SDCL Ch. 25-10.

22. Defendant affirmatively alleges that there is no legal basis for an award of punitive damages and that an award of punitive damages not subject to a predetermined limit would violate Defendant's due process rights under the state and federal constitutions.

23. Defendant affirmatively alleges that Plaintiff's First Amendment claims are barred by the doctrine of qualified immunity.

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Wherefore, Defendant respectfully requests that Plaintiff's complaint be dismissed with prejudice, that the Court award costs and disbursements, and for any other relief that the Court deems just and equitable.

Dated this 9th day of January, 2019.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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*Attorneys for Defendant*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of January, 2019, a true and correct copy of the foregoing Answer was served by United States Mail, first class, postage prepaid, upon the following:

Bruce Danielson

PO Box 491

Sioux Falls, SD 57101

/s/ James E. Moore

One of the Attorneys for Defendants